HIGH COURT OF UTTARANCHAL AT NAINITAL.

Reviewed Judgment

Writ Petition No. 228 (M/S) 2000

Ram Singh Bisht,
Van Daroga, Gaula Khanan Range,
Tarai Purvi Van Prabhag, Haldwani,
District Nainital. ----Petitioner.

Vs.

1. State of Uttaranchal at Dehradun,
2. Chief Conservator of Forest (Kumaon Mandal), West, Nainital.
3. Conservator of Forest West Circle, Uttaranchal, Nainital.
4. Divisional Forest Officer Tarai (East), Forest Division, Haldwani, District Nainital. ----Respondents.

Sri N.S. Negi, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble M.M.Ghildiyal, J.

Heard Sri N.S. Negi, learned counsel for the petitioner and learned Standing Counsel for the respondents.

By means of this writ petition, the petitioner has challenged the order dated 30.09.2000 as it relates to imposition of fine of Rs. 23,800/- passed by the Conservator of Forest/respondent no. 3 and further has prayed to issue a writ in the nature of mandamus directing the respondents not to make any recovery from the salary of the petitioner and refund the amount recovered so far from his salary.

Submission of the petitioner is that the petitioner who was working as Forester in South Jaulasal Range in the year 1997 when he acknowledged that some villagers have cut down some trees in the reserve forests, he made inspection and informed high authorities to take action against the persons concerned. On 13.02.1997 a charge sheet was served upon the

petitioner that the petitioner alongwith other persons, namely, Nawin Chand and Kailash Chand were posted as Forest Guards. During combing of forests between 03.02.1997 to 05.02.1997 it was found that 176 trees were illegally cut down. The petitioner replied the charge sheet and categorically stated that on the complaint of the petitioner, the Revenue Department and the police concerned took action against the persons who were involved in the illegal felling of trees; a case was registered with the police and the Revenue Department realized fine from the accused persons. Vide order dated 12.02.1998 passed by the Divisional Forest Officer/respondent no. 4 the petitioner was suspended.

It was further submitted that again on 20.03.1998, a second charge sheet was served upon the petitioner regarding the same charge. In the second charge sheet it was also mentioned that during his service period as Forester, different trees were cut down by the villagers. The petitioner has further replied to the charge sheet and stated that on his complaint, the Revenue Department as well as the police concerned took action against the persons who were responsible for illegal felling of trees. The Revenue Department imposed fine on them and the fine was also realized. On 07.10.1998 the Divisional Forest Officer, with prior approval of the Conservator of Forest, revoked the suspension order 12.02.1998.

The Divisional Forest Officer, who was the Inquiry Officer submitted its report recording findings that the petitioner had taken utmost action against the villagers who were responsible for illegal felling of the trees; he reported the matters to the police Department as well as the Revenue Department; fine was imposed on the persons who were involved in the illegal felling of trees and the fine realized from the accused persons was deposited in the Govt. exchequer. In his findings, the Inquiry

Officer has also recorded that there was no financial loss accrued to the Department, because on the endeavor of the petitioner fine was imposed on the persons involved in the illegal felling of trees and the same was also realized from them.

After the report was submitted by the Inquiry Officer, the Conservator of Forest directed the Inquiry Officer to review his report. On the instruction of the Conservator of Forest, the inquiry report was reviewed by the Inquiry Officer, but the same was reviewed without affording any opportunity of hearing to the petitioner and the petitioner, alongwith, other employees were also held responsible for a loss to the tune of Rs. 71,400/-. A sum of Rs. 23,800/- was proposed to be recovered from the petitioner's salary. On the basis of said final report, the Conservator of Forests on 30.09.2000 has passed final order. Though, in the inquiry report, the petitioner was not found guilty and no charge was proved against the petitioner, in spite of this fact, the Inquiry Officer in his review report proposed that a sum of Rs. 23,800/- may be recovered from the petitioner's salary and the Conservator of Forests on the basis of final report has passed the order of recovery of Rs. 23,800/- from the petitioner, which is order impugned in the present writ petition.

On the contrary, the respondents in their counter affidavit have stated that on receipt of complaints about illegal felling of trees in a large scale in the Sudilimath Section, a combing was made in which it was found that large number of trees were illegally felled but the petitioner and his subordinates took no action. It was further contended that the Revenue and the Police Department are not empowered to realized fine from the accused persons for illegal felling of trees in the forests. The second charge sheet was based on the combing report submitted by the General Manager Forest Corporation while the

first one was based on the combing report submitted by the Assistant Conservator of Forests. The number of trees found illegally felled by the two combing teams were also different. The petitioner failed to take immediate action against the persons involved in illegal felling of trees and in reporting the matter to the superior authorities as well. The suspension order was revoked conditionally and it was made clear that appropriate action will be taken in accordance with the conclusion of the disciplinary proceedings against the petitioner. The charge of causing loss to the state exchequer by way of illegal felling of trees was proved against the petitioner. The petitioner and his subordinate staff however, took proper and timely action in some cases of illegal filling of trees but a large number of such cases remained unattended. The petitioner was found responsible for a loss amounting to Rs. 23,800/-, consequently, the order to recover the same from the salary of the petitioner was passed which is duly in accordance with law and in accordance with the Departmental Service Rules.

Counsel for the petitioner has contended that the Conservator of Forest in his final order had illegally held responsible the petitioner for the loss of the Govt. exchequer. Though, none of the chares leveled against the petitioner were found proved initially. The other Forest Guards were also on duty for protection of the forests. On some occasion the petitioner and his subordinate staff took proper and timely action in some cases of illegal felling of trees which is undisputed by the Department. The petitioner was always cautious about the theft of the forest trees. He made various complaints against the persons who were involved in felling of the forest trees. The Revenue Department and the police had also interfered with the matters after giving due credit to the

complaints of the petitioner. The Revenue Department had also imposed fine on the accused persons and realized fine from them and the loss incurred to the Govt. in this regard has been completely fulfilled. Hence, the order impugned imposing fine upon the petitioner to the tune of Rs. 23,800/-, is apparently arbitrary, illegal and is liable to be quashed.

The order impugned has been emphatically assailed by the petitioner; firstly on the ground that the Divisional Forest Officer had submitted a report to the Conservator of Forests and in its report the D.F.O. has recorded a finding that because of quick initiation of the petitioner, action was taken against the accused persons and fine was realized from them, consequently there was no loss accrued to the Govt. Exchequer but this finding was lateron altered and reviewed, without affording any opportunity of hearing to the petitioner. It is well settled law that the delinquent official is entitled to get opportunity of hearing until the disciplinary proceeding is concluded. In the present case, after recoding findings, the report was reviewed, but before reviewing the report, the Inquiry Officer has not given any opportunity of hearing to the delinquent official. This material fact was not denied by the counsel for the respondents.

The second ground on which the petitioner has assailed the impugned order is that prior to passing of the final order, the petitioner was not served upon any show cause notice; and further he was not provided a copy of the inquiry report. It is also not disputed by either of the party that the petitioner was not afforded opportunity before passing the final order and copy of the inquiry report was also not supplied to him. Submission of the petitioner is that had he been supplied a copy of the inquiry report, he would have been in a position to defend his case efficiently. The petitioner, in his supplementary affidavit has also stated that as per Circular issued by the

Department, that in case of illegal felling of trees, the loss accrued to the Govt. exchequer shall be realized and divided among the persons responsible which includes the Range Officer of the Range also, but in the present case no amount was sought to be recovered from the Range Officer who was also responsible with the petitioner for the loss, if any. This fact is also not disputed by the respondents.

For the reasons recorded above, the writ petition deserves to be allowed.

Accordingly, the writ petition is allowed. Order dated 30.09.2000 passed by the respondent/Conservator of Forests, West Circle, Nainital, contained in annexure no. 8 to the writ petition, is quashed. No order as to costs.

(M.M. Ghildiyal, J.)

June 26, 2006:
NCM: